

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CLIFFORD MARTIN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the Year(s) ~~or Period(s)~~ 1967.

State of New York
County of Albany

Donna Scranton, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 23rd day of November, 1976, she served the within Notice of Decision by (certified) mail upon Vitale & Wilewski, Esqs. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Henry Wilewski, Esq.
Vitale & Wilewski, Esqs.
26 Journal Square
Jersey City, New Jersey
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative of the) petitioner herein and that the address set forth on said wrapper is the last known address of the (representative of the) petitioner.

Sworn to before me this

23rd day of November, 1976

Donna Scranton

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CLIFFORD MARTIN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article(s) 22 of the :
Tax Law for the Year(s) or Period(s) 1967. :

State of New York
County of Albany

Donna Scranton, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 23rd day of November, 1976, she served the within Notice of Decision by (certified) mail upon Clifford Martin (~~representative of~~) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Clifford Martin
119 Buckingham Road
Upper Montclair, New Jersey 07043
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (~~representative~~ of the) petitioner herein and that the address set forth on said wrapper is the last known address of the (~~representative of the~~) petitioner.

Sworn to before me this

23rd day of November, 1976

Donna Scranton

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

November 23, 1976

TELEPHONE: (518) **457-3850**

Mr. Clifford Martin
119 Buckingham Road
Upper Montclair, New Jersey 07043

Dear Mr. Martin:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(§) **690** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from the date of this notice.

Inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned. They
will be referred to the proper party for reply.

Very truly yours,

PAUL B. COBURN
SUPERVISING TAX
HEARING OFFICER

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE TAX COMMISSION

In the Matter of the Petition :
of :
CLIFFORD MARTIN : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1967.

Petitioner, Clifford Martin, residing at 119 Buckingham Road, Upper Montclair, New Jersey 07043 has filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1967. (File No. 01325). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on July 26, 1976 at 2:45 P.M. Petitioner appeared by Vitale & Wilewski, Esq. (Henry Wilewski, Esq. of counsel). The Income Tax Bureau appeared by Peter Crotty, Esq. (Arthur Rosen, Esq., of counsel).

I. Whether the severance payment received by petitioner, Clifford Martin, a nonresident, in 1967, from the New York Journal American Division of the Hearst Corporation in the sum of \$15,340.00 based on the years 1938 to 1966, was income subject to the New York State personal income tax.

II. Whether petitioner Clifford Martin's income from services in 1967 was allocable to sources without New York State.

1. Petitioner, Clifford Martin, filed a New York State nonresident personal income tax return for 1967, and did not include as income therein the payment of \$15,340.00 received from the Journal American Division of The Hearst

Corporation. The return contained no allocation of business income to New York State.

2. On November 24, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Clifford Martin, for personal income taxes due in the sum of \$1,420.09, plus interest to date, based on the inclusion of the \$15,340.00. In accordance with that Statement of Audit Changes, the Income Tax Bureau issued a Notice of Deficiency on November 24, 1969 in the sum of \$1,557.09.

3. Petitioner, Clifford Martin, was an employee of the Journal American newspaper during the period from 1938 to 1966 with the exception of the years 1941 to 1945 at which time petitioner was in the military service. In 1966 the Journal American was merged with two other newspapers and petitioner became an employee of the World Journal Tribune. In 1967 petitioner, Clifford Martin, received a check for \$15,340.00 in payment of severance pay for his service for the Journal American. The severance pay was computed by taking the last two weeks of petitioner's salary and multiplying that figure by the number of years of service. Pursuant to a union contract with the employer, interceding years spent in the military service were to be included in computing severance pay.

4. In his last years of service for the Journal American, petitioner, Clifford Martin, was the Suburban and Country Circulation Manager. He maintained that 50 percent of his services were performed outside the State of New York. However, no records or logs were offered to establish work performed outside the State.

5. Petitioner, Clifford Martin, sought to amend, at the hearing, his returns for 1965 and 1966 to claim a refund. Petitioner also objected to the delay in receiving a hearing, his petition having been filed in 1969. This delay, it was argued, prejudiced the petitioner in that he did not have a timely

and speedy hearing, resulted in increased interest due, and violated his constitutional rights.

CONCLUSIONS OF LAW

A. That the severance pay received by petitioner, Clifford Martin, was not a pension or other retirement benefit constituting an annuity received by a nonresident (20NYCRR 131.4(d)).

B. That the severance pay received by nonresident petitioner, Clifford Martin, was an item of income derived from or connected with New York sources, attributable to a business or occupation carried on in this state, and such income was entered in his Federal adjusted gross income (Tax Law Section 632(a)1; 632(b)(1)(B); and that the years spent in the military service, though included in the computation of sum paid, did not constitute services performed outside New York which could serve as the basis for an allocation of income.

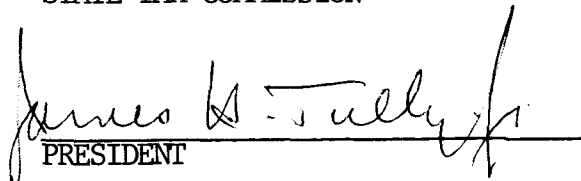
C. That the petitioner, Clifford Martin, did not establish a basis for apportioning or allocating income to sources outside New York for services performed in 1964, 1965, 1966 and 1967; and that the allocation permitted under 20NYCRR 131.18 is, therefore, not available.

D. That the delay between petitioner Clifford Martin's petition for hearing and such hearing was not the result of any deliberateness on the part of the Department of Taxation and Finance or the Commission, nor did the petitioner provide any evidence that he had sought expedition of this matter; and that the increased interest incurred due to the delay is required by the Tax Law. Petitioner, Clifford Martin, was specifically advised thereof in the Notice of Deficiency dated November 24, 1969; and that, as regards possible violation of constitutional rights, the State Tax Commission has no jurisdiction over constitutional questions.

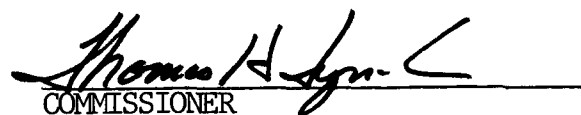
E. That the petition of Clifford Martin is denied and the Notice of Deficiency dated November 24, 1969 is sustained.

DATED: Albany, New York
November 23, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER